

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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<b>MONSANTO COMPANY, and</b>	)	
<b>MONSANTO TECHNOLOGY LLC</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	Case No. 4:09-cv-00686-ERW
	)	
<b>E.I. DUPONT DE NEMOURS AND</b>	)	
<b>COMPANY and PIONEER HI-BRED</b>	)	
<b>INTERNATIONAL, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**MONSANTO'S OPPOSITION TO DUPONT AND PIONEER'S MOTION  
FOR LEAVE TO FILE SURREPLY IN OPPOSITION TO  
MONSANTO'S SEVENTH MOTION TO COMPEL**

Once again, Defendants ask this Court to extend the ordinary briefing schedule in this case so that they may file yet another surreply. As on the other occasions, Defendants make no attempt to satisfy this Court's admonition that "[s]ur-replies shall only be permitted . . . *upon a showing of extraordinary circumstances.*" 11/08/10 Case Management Order (Dkt. 414) (emphasis added); *see also* Dkt. 196 (same); *Lintz v. American General Finance, Inc.*, 50 F. Supp. 2d 1074, 1076 (D. Kan. 1999) ("leave to file a surreply is generally only granted in '*rare circumstances*'") (emphasis added)); *Aslani v. Sparrow Health Sys., Inc.*, 2009 WL 3711602, \*22 (W.D. Mich. Nov. 23, 2009) ("both this court and other federal courts *rarely* grant

leave to file a sur-reply” (emphasis added)). Because no extraordinary circumstances exist here, Defendants’ Motion for Leave to File a Surreply should be denied.<sup>1</sup>

The proposed surreply is nothing more than Defendants’ thinly-veiled attempt to get the last word. Although they state that certain categories of documents were never previously discussed and that Monsanto misrepresents previous statements made by Defendants, all that Defendants can show is that they disagree with Monsanto on certain points in Monsanto’s reply. The fact is, Monsanto seeks no new relief and asserts no new theories for its motion to compel. Rather, like any other moving party in a reply, Monsanto simply responds to those arguments raised in Defendants’ Opposition, and used examples to support its response. That Defendants feel the need to reinforce their arguments following Monsanto’s Reply is no justification for another round of briefing.

Defendants have failed to demonstrate “extraordinary circumstances” or even “good cause” (which Defendants’ suggest is the applicable standard (*see* Mot. at ¶ 7)). Therefore, Monsanto respectfully requests that the Court deny Defendants’ motion for leave to file their proposed surreply.

Dated: June 6, 2011

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<sup>1</sup> Monsanto does not believe that any further briefing is necessary on its motion to compel. However, if the Court allows Defendants to file a surreply, Monsanto respectfully requests the opportunity to file a response to the proposed surreply.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was filed electronically with the Clerk of Court and served by operation of the Court's ECF System to all attorneys of record as indicated, this the 6<sup>th</sup> day of June, 2011:

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